

REMARKS

Specification

In the specification, the Abstract has been amended to correct minor editorial problems.

Summary

Claims 1-3, 5-14 and 16-22 stand in this application. Claims 4 and 15 have been canceled without prejudice. Claims 1, 14, 18 and 20 are currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Official Notice

At pages 6 and 8 of the Office Action the Examiner takes Office Notice of the subject matter of claims 13, 17 and 22 that is admittedly not disclosed by the cited reference. Applicant respectfully traverses the taking of Office Notice and respectfully requests that the Examiner support the taking of Office Notice with adequate evidence.

According to MPEP 2144.03, "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable

demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961))." Applicant respectfully submits that the limitations in the above recited claims, asserted to be well-known, or to be common knowledge in the art, are not capable of instant and unquestionable demonstration as being well-known. If such facts are capable of instant and unquestionable demonstration as being well-known, which Applicant does not admit, Applicant respectfully requests that the Examiner provide sufficient documentary evidence to support such a finding.

As stated in MPEP 2144.03, "If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697."

Allowable Claims

We would like to thank the Examiner for indicating the allowability of claim 4 if amended to include all of the limitations of the base claims and any intervening claims. Applicant respectfully submits that the limitations of claim 4 have been incorporated into independent claims 1, 14, 18 and 20. Accordingly, Applicant respectfully submits that claims 1, 14, 18 and 20 and all claims dependent therefrom are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

35 U.S.C. § 112

Claims 20-22 have been rejected under 35 U.S.C. § 112 for not particularly pointing out and distinctly claiming the subject matter which the applicant regards as his

invention. Applicant respectfully traverses the rejection based on the above amendments. These claims have been amended in accordance with the Office Action, and removal of this rejection is respectfully requested. Applicant further submits that the above amendments are made to overcome a § 112 rejection and are not made to overcome the cited references. Accordingly, these amendments should not be construed in a limiting manner.

35 U.S.C. § 103

Claims 1-3, 5, 13-17 and 20-22 were rejected under 35 USC § 103(a) as being unpatentable over Leatherbury et al. (U.S. Publication No. 2002/0136231) in view of Yang et al. (U.S. Publication No. 2004/01010446).

Claims 1-3, 5, 13-17 and 20-22 were rejected under 35 USC § 103(a) as being unpatentable over Leatherbury et al. (U.S. Publication No. 2002/0136231) in view of Yang et al. (U.S. Publication No. 2004/01010446).

Claims 13 and 17 were rejected under 35 USC § 103(a) as being unpatentable over Leatherbury et al. (U.S. Publication No. 2002/0136231) in view of Yang et al. (U.S. Publication No. 2004/01010446).

Claim 22 was rejected under 35 USC § 103(a) as being unpatentable over Leatherbury et al. (U.S. Publication No. 2002/0136231) in view of Yang et al. (U.S. Publication No. 2004/01010446).

Claims 5-8 were rejected under 35 USC § 103(a) as being unpatentable over Leatherbury et al. (U.S. Publication No. 2002/0136231) in view Yang et al. (U.S.

Publication No. 2004/0101046), and further in view of Davis et al (U.S. Patent No. 5,754,764).

Claims 9-11, 18 and 19 were rejected under 35 USC § 103(a) as being unpatentable over Leatherbury et al. (U.S. Publication No. 2002/0136231) in view Yang et al. (U.S. Publication No. 2004/0101046), and further in view of Allison et al (U.S. Patent No. 6,373,848).

Applicant respectfully traverses these rejections, and requests reconsideration and withdrawal of the obviousness rejections. To form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1-3, 5-14 and 16-22. Therefore claims 1-3, 5-14 and 16-22 define over the references whether taken alone or in combination.

Applicant respectfully submits that the independent claims 1, 14, 18 and 20 have been amended to include the allowable subject matter indicated at page 12, paragraph 7 of the Office Action. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claims 1, 14, 18 and 20.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. See MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 2, 3-13, 16, 17, 19, 21 and 22 is respectfully requested. Claims 2, 3-13, 16, 17, 19, 21 and 22 also are

non-obvious and patentable over the cited references, taken alone or in combination, at least on the basis of their dependency from claims 1, 14, 18 and 20. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Conclusion

For at least the above reasons, Applicant submits that claims 1-3, 5-14 and 16-22 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-3, 5-14 and 16-22 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

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Respectfully submitted,

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